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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/021,208	12/07/2001	Gary Heartsfield	077662.000008	1383

27644 7590 02/28/2003

THOMPSON & KNIGHT L.L.P.
PATENT PROSECUTION DEPARTMENT
98 SAN JACINTO BLVD., SUITE 1200
AUSTIN, TX 78701

EXAMINER

THOMAS, ALEXANDER S

ART UNIT	PAPER NUMBER
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1772

DATE MAILED: 02/28/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/021,208

Applicant(s)

HEARTSFIELD, GARY

Examiner

Alexander S. Thomas

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 February 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 5-16, 21 and 22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 5-16, 21 and 22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 5-10 and 13-16 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Zybko et al. See column 3, lines 58-62 and column 5, lines 5-7. The tiles of the reference are considered to inherently possess the instantly claimed rolled up properties since the tiles have the same structure that is instantly claimed.

3. Claims 5-8, 13-16 and 22 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Ackley. See column 1, lines 5-7 and column 1, line 53 through column 2, line 39. The pad of the reference are considered to inherently possess the instantly claimed rolled up properties since the pad has the same structure that is instantly claimed.

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 9-12 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ackley. The reference discloses the invention substantially as claimed; see column 1, lines 5-7 and column 1, line 53 through column 2, line 39. However it does not disclose the claimed materials used for the surface layer and the cushion layer, or

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the amount of segments being claimed. It would have been obvious to one of ordinary skill in the art to use any well known material as the surface and cushion layers of the pad in Ackley in order to provide the desired structural properties. It would also have been obvious to one of ordinary skill in the art to vary the amount of foam elements in the article of Ackley depending on the desired size of the pad and the desired structural properties for a particular end use.

6. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Zybko et al. The reference discloses the invention substantially as claimed; see column 3, lines 58-62 and column 5, lines 5-7. However it does not disclose the amount of segments claimed. It would have been obvious to one of ordinary skill in the art to vary the amount of adhesive portions in the article of the reference depending on the desired size of the tile and the desired structural properties for a particular end use.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alexander S. Thomas whose telephone number is 703-308-2421. The examiner can normally be reached on M-F 6:00-3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 703-308-4251. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

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A handwritten signature in cursive script, appearing to read "Alexander S. Thomas".

ALEXANDER S. THOMAS
PRIMARY EXAMINER

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February 25, 2003